

State Water Resources Control Board

ORDER FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION FOR U.S. ENVIRONMENTAL PROTECTION AGENCY SMALL VESSEL GENERAL PERMIT

PROJECT: Small Vessel General Permit (sVGP)

APPLICANT: Mr. David Smith
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
Mail Code: WTR-5
San Francisco, CA 94105

This Order responds to your request, received on December 8, 2011, on behalf of the United States Environmental Protection Agency (USEPA) for a water quality certification (Certification) for the sVGP. The 2013 sVGP authorizes discharges incidental to the normal operation of non-military and non-recreational vessels less than 79 feet in length. A Congressional moratorium (initiated by Public Law 110-299 and then extended by Public Law 111-215) exempts owners and operators of commercial fishing vessels and non-recreational, non-military vessels less than 79 feet in length from having to obtain a National Pollutant Discharge Elimination System (NPDES) permit for all incidental discharges, with the exception of ballast water, until December 18, 2013. The 2013 sVGP will serve as the NPDES permit for vessels that fall into this category after that date.

ACTION:

	Order for Standard Certification		Order for Denial of Certification
X	Order for Technically Conditioned Certification		Order for Waiver of Waste Discharge Requirements

AUTHORIZATION:

This Certification conditionally certifies the sVGP, based on the proposed sVGP issued by USEPA on December 8, 2011, in Federal Register Volume 76, Number 236 that regulates nine broad categories of small vessel discharges by setting non-numeric effluent limits including Best Management Practices (BMPs).

The effluent limits are organized into management groups instead of having specific effluent limitations to each discharge type. Management groups are: (1) general requirements, (2) fuel management, (3) engine and oil control, (4) solid and liquid waste management, (5) deck washdown and runoff and above water line hull cleaning, (6) vessel hull maintenance, (7) graywater management, (8) fish hold effluent management, (9) ballast water management, (10) seawater cooling overboard discharge, and (11) compliance with other statutes and regulations. Nine specific discharge types are covered in the eleven management groups (see Table 1).

Table 1: Vessel Waste Discharges Eligible for Coverage Under the sVGP

No.	Discharge	No.	Discharge
1	Anti-Foulant Hull Coating Leachate	5	Graywater
2	Bilge Water	6	Non-Contact Engine Cooling Water
3	Deck Runoff	7	Packing Gland Effluent
4	Fish Hold Effluent	8	Underwater Hull Husbandry
		9	Ballast Water

The sVGP includes, in the management groups, non-numeric effluent limits in the form of BMPs to help minimize the amount of any discharge produced, and to reduce the likelihood of that discharge entering a waterbody. Even though a vessel may not produce all of these discharges, a vessel owner or operator is responsible for meeting the applicable effluent limitations and conditions for every listed waste type that the vessel discharges. The sVGP includes effluent limitations to control a variety of pollutants, which have been classified into seven types (see Table 2).

Table 2: Types of Pollutants Regulated by the sVGP

Pollutant Groups	Examples
Aquatic Nuisance Species (a.k.a., aquatic invasive species, or nonindigenous aquatic species)	Non-native Jellyfish, Zebra Mussels, Asian Clams, etc.
Most Conventional Pollutants	Biochemical Oxygen Demand, Oil and Grease, pH, Total Suspended Solids, etc.
Metals	Iron, Nickel, Zinc, Copper, Bronze, Silver, etc.
Nutrients	Phosphorous and Nitrogen
Pathogens	E. Coli and Fecal Coliform
Other Toxic Pollutants	Anti-foulants, rust inhibitors, epoxy coating materials, etc.
Non-Conventional Pollutants with Toxic Effects	Phthalates, Phenol, Tetrachloroethylene, Chlorine Residual, Chlorides, etc.

The sVGP's effluent limitations are intended to control these pollutants, which are potentially constituents of industrial waste, chemical waste, or garbage discharged from vessels.

The sVGP establishes that all point source discharges must meet technology-based effluent limitations. Water quality-based effluent limitations are required where the technology-based limitations are not sufficient to meet applicable water quality standards. Certain discharge types would be limited or prohibited in waters protected for conservation purposes (e.g., national marine sanctuaries and national parks). The sVGP also establishes specific corrective actions as well as inspections, monitoring record keeping, and reporting requirements. The sVGP will cover discharges from small vessels, less than 79 feet, excluding military and recreational vessels, into waters of the United States in all states and territories.

The sVGP will not require the vessel owners or operators to submit a Notice of Intent (NOI) to receive permit coverage. Instead, vessel owners/operators must complete the sVGP Permit Authorization and Record of Inspection (PARI) form, which records that the applicable owners/operators have read, and will implement all of the requirements of the sVGP.

To comply with the public notice requirements of California Code of Regulations, title 23, sections 3858 and 3861 governing the California's Water Quality Certification Program, a public notice of USEPA's Application for certification for the sVGP was posted on the State Water Board's Web site on March 28, 2012. The comment period on the application closed on May 14, 2012.

STANDARD CONDITIONS:

1. This Certification is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Water Code section 13330 and California Code of Regulations, title 23, section 3867 et seq. (Auth: Wat. Code, §§ 1058, 13160, 13160.1, 13321; Cal. Code Regs., tit. 23, § 3860. This condition cannot be made less stringent without violating the requirements of state law, including water quality standards.)
2. This Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to California Code of Regulations, title 23, subsection 3855(b), and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought. (Auth: Wat. Code, §§ 1058, 13160, 13160.1, 13321; Cal. Code Regs., tit. 23, § 3860. This condition cannot be made less stringent without violating the requirements of state law, including water quality standards.)
3. This Certification is conditioned upon total payment of any fee required under California Code of Regulations, title 23, chapter 28 and owed by the applicant. (Auth: Wat. Code, §§ 1058, 13160, 13160.1, 13321; Cal. Code Regs., tit. 23, § 3860. This condition cannot be made less stringent without violating the requirements of state law, including water quality standards.)

ADDITIONAL CONDITIONS:

1. All discharges are prohibited in State Water Quality Protection Areas as defined in the Public Resources Code, sections 36700 – 36900 inclusive, and the California Ocean Plan, except those discharges that occur in transit associated with vessel traffic separation lanes. (Auth: Pub. Resources Code, § 36710. This condition cannot be made less stringent without violating the requirements of state law, including water quality standards.)
2. If the ballast water receives chlorination treatment, the discharge to the ocean must not exceed a maximum level of 60 micrograms per liter (µg/L) of total residual chlorine, and if the discharge is to enclosed bays and inland waters, then it must not exceed a maximum level of 19 µg/L of total residual chlorine (The Gold Book, U.S. EPA 440/5-86-001, May 1986.) (Auth: See generally, statewide and regional water quality control plans; 33 U.S.C. § 1313; Wat. Code, §§ 13140, 13240, 13377; Cal. Code Regs., tit. 23, § 2235.2. This condition cannot be made less stringent without violating the requirements of state law, including water quality standards.)
3. Vessel discharges must comply with all requirements set forth in all applicable statewide water quality control plans and policies, and regional water quality control plans. Attachment 3 lists the effluent limitations based on narrative water quality objectives that must be met in the receiving water. (Auth: See generally, statewide and regional water quality control plans; 33 U.S.C. § 1313; Wat. Code, §§ 13140, 13240. This condition cannot be made less stringent without violating the requirements of state law, including water quality standards.)
4. None of the discharges permitted by the sVGP may contain hazardous waste as defined in the California Code of Regulations, title 22, section 66261 and Water Code section 13173, as well as hazardous substances listed in Attachment 2 of this document which includes bilge water. Additionally, the following wastes are prohibited from being discharged into waters of the State: sewage sludge, used or spent oil, and garbage or trash (including plastic). The vessel owner or operator, upon entering State waters for the first time in the 2013 sVGP cycle, must submit a letter electronically to the State Water Board, Division of Water Quality, NPDES Unit, certifying that hazardous wastes as defined under California law, and prohibited wastes, will not be discharged from its vessel or vessels. (Auth: See generally, statewide and regional water quality control plans; 33 U.S.C. § 1313; Pub. Resources Code, § 72420.2; Wat. Code, §§ 13140, 13173, 13240, 13267, 13383; Cal. Code Regs., tit. 22, § 66261. This condition cannot be made less stringent without violating the requirements of state law, including water quality standards.)

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5. Owners or operators of vessels subject to the sVGP shall comply with California Fish and Game Code section 2301, regarding dreissenid mussels (e.g. quagga and zebra mussels). Owners or operators shall submit to inspections by the California Department of Fish and Game at launch ramps or at any other location around the state to prevent the transportation of the dreissenid mussels. If owners or operators of vessels discover dreissenid mussels within California waterbodies, that discovery shall be immediately reported to the California Department of Fish and Game. (Auth: Fish & G. Code, § 2300 et seq. This condition cannot be made less stringent without violating the requirements of state law, including water quality standards.)

6. There must be no oily sheen from any discharge, and oil and grease must not exceed 15 milligrams per liter (mg/L) from any discharge. (Auth: See generally, statewide and regional water quality control plans; 33 U.S.C. § 1313; Wat. Code, §§ 13140, 13240. This condition cannot be made less stringent without violating the requirements of state law, including water quality standards.)
7. Detergents must not be used to disperse hydrocarbon sheens in any waste streams. To ensure this practice is implemented for all state waters, and additionally to protect drinking water sources in the Sacramento and San Joaquin Delta, methylene blue active substances (MBAS) should not exceed 0.5 mg/L in any waste streams being discharged, applicable to all waterbodies (Auth: See generally, statewide and regional water quality control plans; 33 U.S.C. § 1313; Wat. Code, §§ 13140, 13240. This condition cannot be made less stringent without violating the requirements of state law, including water quality standards.).
8. Allowance for emergency conditions. In the case of a sudden unexpected situation which involves a clear and imminent danger to life, health or property, the requirements of this Certification are suspended to the extent that those requirements would otherwise be violated. Any suspension of the requirements of this Certification is only permitted as long as the emergency conditions persist. In such cases the vessel owner or operator shall report to the State Water Board the emergency conditions requiring the violation of Certification conditions, the specific conditions that were violated, the duration of the violation, and nature of discharges during that emergency period. This report shall be transmitted to the State Water Board within 24 hours after the emergency conditions cease. In the event that the State Water Board determines that the circumstances do not constitute an emergency, the State Water Board may seek appropriate investigatory or enforcement action pursuant to Administrative Condition Nos.6 and 7. (Auth: Pub. Resources Code, § 21080; Wat. Code, § 1058; Cal. Code Regs., tit. 14, § 15359. This condition cannot be made less stringent without violating the requirements of state law, including water quality standards.)

Submit report electronically to calvgp_cert@waterboards.ca.gov

9. This Certification includes Attachments 1-3. Following is a description of these attachments:
 - Attachment 1 – Signatory Requirements
 - Attachment 2 – List of Chemical Names and Common Names for Hazardous Wastes and Hazardous Materials, Title 22, Chapter 11, Appendix X, California Code of Regulations
 - Attachment 3 – Effluent Limitations Based on Narrative Objectives in the California Ocean Plan and Basin Plans

ADMINISTRATIVE CONDITIONS:

1. This Certification shall expire five (5) years from the date of issuance of the 2013 sVGP unless USEPA administratively extends it. (Auth: Wat. Code, § 13377; Cal. Code Regs., tit. 23 §§ 2235.2, 3861. This condition cannot be made less stringent without violating the requirements of state law, including water quality standards.)

2. The State Water Board reserves the right to suspend, cancel, or modify and reissue this Certification, after providing notice to USEPA. If the sVGP fails to comply with the State Water Quality Control Plans and Policies, or any other appropriate requirement of the state law, the State Water Board may add to or modify the conditions of this Certification, as appropriate, to implement any new or revised water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the Clean Water Act. (Auth: Wat. Code, §§ 1058, 13160, 13160.1, 13321; Cal. Code Regs., tit. 23, § 3860. This condition cannot be made less stringent without violating the requirements of state law, including water quality standards.)
3. The Vessel owners/operators are subject to the acquisition of all local, regional, state, and federal permits and approvals as required by law. Failure to meet any conditions contained herein or any the conditions contained in any other permit or approval issued by the State of California or any subdivision thereof may result in the revocation of this Certification. (Auth: Wat. Code, § 13002. This condition cannot be made less stringent without violating the requirements of state law, including water quality standards.)
4. USEPA shall notify the State Water Board within 24 hours of any noncompliance that may impact the beneficial uses of waters of the state. The notification shall include the volume and type of materials discharged and recovered, measures used to stop and contain the discharge, and measures implemented to prevent future discharges. (Auth: Pub. Resources Code, § 21080; Wat. Code, § 1058; Cal. Code Regs., tit. 14, § 15359. This condition cannot be made less stringent without violating the requirements of state law, including water quality standards.)
5. In the event of any violation or threatened violation of the conditions of this Certification, the violation or threatened violation shall be subject to any remedies, penalties, processes, or sanctions as provided for under state or federal law. For purposes of the Clean Water Act section 401(d), the applicability of any state law authorizing remedies, penalties, processes, or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Order. (Auth: 33 U.S.C. § 1341; Wat. Code, div. 7, ch. 5 (§§ 13300-13365, inclusive), and ch. 5.5 (§§ 13370-13389, inclusive). This condition cannot be made less stringent without violating the requirements of state law, including water quality standards.)
6. In response to a suspected violation of any condition of this Certification, the State Water Board may require a vessel owner or operator to furnish, under penalty of perjury, any technical or monitoring reports the State Water Board deems appropriate, provided that the burden, including costs, of the reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. (Auth: Wat. Code, §§ 13267, 13383. This condition cannot be made less stringent without violating the requirements of state law, including water quality standards.)

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) EXEMPTION:

Based on a review of the sVGP information submitted, the State Water Board staff determined that the issuance of this Certification and the activities described herein meet the exemption criteria under California Code of Regulations, title 14, section 15308 (Actions Taken by Regulatory Agencies for Protection of the Environment). Additionally, State Water Board staff concludes that no exceptions apply to the activities approved by this Certification. The State Water Board has filed a Notice of Exemption in accordance with the California Code of Regulations, title 14, section 15062 for this Order.

STATE WATER BOARD CONTACT PERSONS:

If you have any questions or comments, please contact Mr. Bill Orme, Chief of our Water Quality Certification Unit, at (916) 341-5464 (borme@waterboards.ca.gov), or Dr. Maria de la Paz Carpio-Obeso, Chief of our Ocean Standards Unit, at (916) 341-5858 (mcarpio-obeso@waterboards.ca.gov).

WATER QUALITY CERTIFICATION:

I hereby issue an order certifying that discharges as described in the sVGP comply with the applicable provisions of Clean Water Act sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) if all of the conditions listed in this Certification are met. These discharges are also regulated pursuant to State Water Board Water Quality Order No. 2003-0017-DWQ, which authorizes this Certification to serve as Waste Discharge Requirements pursuant to the California Water Code section 13000 et seq.

Except insofar as may be modified by any preceding conditions, all Certification actions are contingent on (a) the discharge being limited and all proposed mitigation being completed in strict compliance with the sVGP, and (b) compliance with all applicable requirements of Statewide Water Quality Control Plans and the Regional Water Quality Control Board Water Quality Control Plans.

Thomas Howard
Executive Director

Date